

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

FILED
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2004 JUN 28 P 2:47

U.S. DISTRICT COURT
DISTRICT OF MASS.

JOHN CONTEH

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

APPLICATION FOR AN EMERGENCY WRIT OF
FEDERAL HABEAS CORPUS PURSUANT TO 2241

PETITIONER, JOHN CONTEH APPEARING PRO SE AND PRESENTLY INCARCERATED IN THE PLYMOUTH COUNTY CORRECTIONAL FACILITY, IN PLYMOUTH, MASSACHUSETTS, BRINGS THIS INSTANT MOTION PURSUANT TO 28 USC § 2241.

THE BASIS OF MY PETITION IS ABOUT MY ILLEGAL CONVICTION ~~AND~~ FOR CONSPIRACY TO COMMIT BANK FRAUD AND FALSE STATEMENT IN THE SOUTHERN DISTRICT OF NEW YORK RESULTING IN ME BEING INCARCERATED BY THE INS AT THE ABOVE NAMED FACILITY ~~FOR~~ SINCE JULY 2001 (3 YEARS GOING) AFTER SERVING TEN MONTHS AND TWO WEEKS FOR THIS CONVICTION.

FACTS AND TRAVEL

A FOUR COUNT INDICTMENT ~~W~~ 98-CR-876 (LAK) WAS FILED IN THE SOUTHERN DISTRICT OF NEW YORK ON AUGUST 11, 1998.
CHARGING

1. CONSPIRACY TO VIOLATE

- Count 1. CONSPIRACY TO VIOLATE 18 USC § 1344 and 513(a)
 Count 2. 18 USC § 1344
 Count 3. 18 USC § 513(a)
 Count 4. 18 USC § 1001

PETITIONER'S CO-DEFENDANT WAS CONVICTED OF VIOLATING Count 1.

A THREE DAY TRIAL WAS CONDUCTED IN THE SOUTHERN DISTRICT OF NEW YORK BEFORE THE HONOURABLE LEWIS A. KAPLAN BY THE ASSISTANT UNITED STATES ATTORNEY AITAN GOELMAN IN DECEMBER 1999.

SEE EXHIBIT B.

THE JURY RETURNED A GUILTY VERDICT AFTER A THREE DAY TRIAL FOR CONSPIRACY TO COMMIT BANK FRAUD AND FALSE STATEMENT. DEFENDANT WAS SENTENCED TO A TERM OF ONE YEAR AND ONE DAY, AND THREE YEARS SUPERVISED RELEASE, TO THE RESTITUTION OF \$34,200 ~~APPROXIMATE~~ CONTRARY TO THE JURY VERDICT THAT I NEVER CAUSED MONEY TO BE DEPOSITED, NOR SUBSEQUENTLY CAUSED MONEY TO BE WITHDRAWN 18 USC § 1344 and 18 USC § 513(a). [My Co-defendant was also not convicted of violating 18 USC § 1344 and 513(a).

See. UNITED STATES V. CONTEH, NO. 9: CR. 876 (LAK) (SDNY, July 24, 2000) (JURY VERDICT RENDERED ON DECEMBER 9, 1999), aff'd, Mandate, NO. 00-1531 (2d Cir. Mar. 6, 2001).

ISSUE PRESENTED:

1. THE TRIAL COURT LACK SUBJECT MATTER, AND ^{THUS IN} WANT OF JURISDICTION TO HEAR AITAN GOELMAN, THE TRIAL ASSISTANT OF THE U.S. ATTORNEY, FOR UNAUTHORIZED REPRESENTATION ~~BEFORE THE~~ FOR THE GOVERNMENT WITHOUT TAKING THE

OATH OF OFFICE REQUIRED BY FEDERAL STATUTE.

(Pub. L. 89. 554, Sept. 6, 1966, 80, Stat. 424)

2. MY RIGHT TO BE PROSECUTED BY AN AUTHORIZED GOVERNMENT PROSECUTOR THAT TOOK HIS OATH OF OFFICE WAS VIOLATED.

CASE

"ATTORNEYS FOR THE GOVERNMENT" ARE THOSE DESCRIBED IN F.R.C.P. 54 (C). IN TERMS RELEVANT HERE, THE ATTORNEY MUST BE AN AUTHORIZED "ASSISTANT" OF THE UNITED STATES ATTORNEY.

ACCORDINGLY, IF BY OMISSION OF THE TAKING OF THE OATH OF OFFICE, MR. AITAN GOELMAN WAS NOT AN AUTHORIZED ASSISTANT OF THE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK ON DECEMBER 7, 8 and 9, 1999.

MR. Goelman was not an "attorney for the Government" and his appearance before the jury on these dates is a violation of Federal Statute, and the Court is in want of jurisdiction.

CONGRESS HAS USED PLAIN LANGUAGE TO REQUIRE THAT AN ATTORNEY APPOINTED TAKE AND OATH TO EXECUTE FAITHFULLY HIS DUTIES "BEFORE TAKING OFFICE".

THIS IS A NECESSARY CONDITION PRECEDENT TO THE EXERCISE OF AUTHORITY AS AN ASSISTANT OF THE UNITED STATES ATTORNEY, AND THAT CONDITION WAS NOT MET HERE.

THE OATH SOLEMNIZES THE APPOINTMENT AND SENSITIZES THE APPOINTED PERSON TO THE OBLIGATIONS AND LIMITATIONS OF THE OFFICE.

ADDITIONALLY, IT FORMALIZES THE APPOINTMENT AND WORKS AN OFFICIAL NOTIFICATION THAT THE APPOINTED PERSON REPRESENTS

THE GOVERNMENT OF THE UNITED STATES IN ITS PROSECUTING AUTHORITY AND BINDS THAT BRANCH OF GOVERNMENT TO THE ACTS OF THE APPOINTED PERSON.

IN TERMS FAMILIAR TO THE LAW OF AGENCY, THE OATH IS EVIDENCE OF ACTUAL AUTHORITY OF THE ATTORNEY AS AGENT AND THEREBY AVOIDS DISPUTES, WHICH COULD BE GENERATED BY RELIANCE UPON SOME APPARENT AUTHORITY.

IN LIGHT OF THE UNITED STATES CODE 5 USC § 3331, WHICH STATES IN PART

"AN INDIVIDUAL, EXCEPT THE PRESIDENT, ELECTED OR APPOINTED TO AN OFFICE OF HONOR OR PROFIT IN THE CIVIL SERVICE, SHALL TAKE THE FOLLOWING OATH" (See exhibit B for Aitan Goelman) (Pub. L. 89-554, Sept 6, 1966, 80 Stat. 424.)

THE ONLY EXCEPTION UNDER THE STATUTE IS THE PRESIDENT. AN OFFICIAL OATH IS AN INCIDENT TO THE DISCHARGE OF THE DUTIES IMPOSED. See. Pignatiello v. U.S., 582 F.Supp. 251 (D.Col.) AITAN GOELMAN, Esq., CANNOT DISCHARGE THE DUTIES IMPOSED AS ASSISTANT UNITED STATES ATTORNEY WITHOUT TAKING THIS OATH.

THUS, THE COURT LACKED JURISDICTION TO HEAR A CASE FROM AITAN GOELMAN AS UNITED STATES ATTORNEY. (See Am. Jur. 2d. public officers & employees § 126) OATH AND AFFIRMATION REQUIRED BY FEDERAL STATUTE.

FURTHERMORE, 5 USC § 3332 STATES THE FOLLOWING: "AN OFFICER, WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF HIS APPOINTMENT, SHALL FILE WITH THE OATH REQUIRED BY SECTION 3331 OF THIS TITLE AN AFFIDAVIT THAT NEITHER HE NOR ANYONE ACTING IN HIS BEHALF HAS GIVEN, TRANSFERRED, PROMISED OR PAID ANY CONSIDERATION

FOR OR IN THE Expectation or Hope of receiving Assistance in securing the appointment".

Mr. Artan Goelman was appointed on September 13, 1998 and this is 2004, he is required by federal Statute. The oath and Affirmation are required by federal Statute.

Absent a showing that, Artan Goelman fulfilled this requirement under federal Statute. The Court had no jurisdiction to consider a Case from Artan Goelman without Supervision under an authorized Assistant United States Attorney who took the oath.

Since Petitioner Was Convicted in this Case presented by Mr. Goelman who was not authorized by federal Statute, my Conviction is in Violation of federal Statute, and thus the Constitution.

Wherefore, this honourable Court should dismiss this Conviction, and or Ordered ~~the~~ the Petitioner to be ~~being~~ prosecuted by an authorized Assistant United States attorney.

Please See exhibits.

- A - Cover letter from U.S. Department of Justice (request # 03-3850 under the freedom of Information Act.)
- B - Appointment Affidavits for Artan Goelman "did not take this oath of office as required by federal Statute.

C - Appointment affidavits for Daniel M. Gitner,
"took OATH OF OFFICE AS REQUIRED BY
Federal Statute."

~~Daniel M. Gitner~~

Based on the foregoing, Petitioner respectfully
moves this Court for such and further relief.

Dated: 25th June, 2004
Plymouth, Massachusetts.
18 June, 2004.

Sincerely Yours,
John Conteh
26 LONG POND ROAD,
PLYMOUTH, MA - 02360





U.S. Department of Justice

FILED FEB 26 2004
Executive Office for United States Attorneys
Freedom of Information/Privacy Act Unit
600 E Street, N.W., Room 7300
Washington, D.C. 20530
202-616-6757

Requester: John Conteh

Request Number: 03-3850

Subject of Request: AUSAs Aitan D. Goelman & Daniel M. Gitner
(Oath of Office)/NYS.

Dear Requester:

Your request for records under the Freedom of Information Act/Privacy Act has been processed. This letter constitutes a reply from the Executive Office for United States Attorneys, the official record keeper for all records located in this office and the various United States Attorneys' offices. To provide the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes.

All of the records you seek are being made available to you. We have also processed your request under the Freedom of Information Act and are making all records required to be released, or considered appropriate for release as a matter of discretion, available to you. **Therefore, by this letter we authorize the partial release of 2 pages (See enclosed Appointment Affidavits for AUSAs Goelman & Gitner).**

This is the final action my office will take on EOUSA case 03-3850.

Sincerely,

Marie A. O'Rourke
Assistant Director

Enclosures

APPOINTMENT AFFIDAVITS

FILED
CLERKS OFFICE

2004 JUN 28 P 2:47

United States Attorney

(Position to which appointed)

9/13/98

U.S. DISTRICT COURT
DISTRICT OF MASS.

Department of Justice

(Department or agency)

U.S. Attorney's Office

(Bureau or Division)

New York, NY

(Place of employment)

I, Aitan Goelman, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

7(C)

(Signature of appointee)

Subscribed and sworn (or affirmed) before me this _____ day of _____, 19____,

at _____

(City)

(State)

[SEAL]

May Quirion

(Signature of officer)

Personnel Officer

(Title)

Commission expires _____

(If by a Notary Public, the date of expiration of his/her Commission should be shown)

NOTE.—The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.

RIP
67(C)

STANDARD FORM 41
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 275
41-107

ONE APPROVAL NO. 50-10114

APPOINTMENT AFFIDAVITS

Assistant United States Attorney
(Position to which appointed)

December 07, 1997

(Date of appointment)

Department of Justice
(Department or agency)

US Attorney's Office - SDNY
(Bureau or division)

New York, New York
(Place of employment)

I, Daniel M. Gitner

, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

KC

(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 8th day of December A.D. 1997

at New York
(City)

New York
(State)

[SEAL]

DE Ruben

(Signature of officer)

Personnel Specialist
(Title)

Commission expires _____

If by a Notary Public, the date of expiration of his Commission should be shown)

RIP
67CC